IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

TUESDAY, THE 6TH NOVEMBER 2007 / 15TH KARTHIKA 1929

WP(C).No. 21678 of 2007(E)

OS.434/2004 of MUNSIFF-MAGISTRATE COURT, CHALAKUDY

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PETITIONER:

SASI, S/O. KAVALAN, MELADUR DESOM,
ALATHUR VILLAGE, MUKUNDAPURAM TALUK.

BY ADV. SRI.FRANCO T.J.

RESPONDENT:

VARGHESE, S/O. RAPPAI,
ELANJIPPILLY HOUSE,
P.O.MELADUR, ALATHUR VILLAGE,
MUKUNDAPURAM TALUK.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 06/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC NO 21678/07

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1. COPY OF THE PLAINT DT. 7.9.04 OF O.S. 434/2004 OF THE MUNSIFF COURT, CHALAKUDY

EXT.P2. COPY OF THE WRITTEN STATEMENT DT. 21.6.05 IN O.S.434/2004 OF THE MUNSIFF COURT, CHALAKUDY

EXT.P3. COPY OF THE ADDITIONAL WRITTEN STATEMENT DT. 10.7.07 FILED IN O.S.434/2004 OF THE MUNSIFF COURT, CHALAKUDY

EXT.P4. COPY OF THE I.A.1057/2007 IN O.S.434/2004 DT. 10.7.07 OF THE MUNSIFF COURT, CHALAKUDY

EXT.P5. COPY OF THE I.A.1056/2007 IN O.S.434/2004 DT. 10.7.07 OF THE MUNSIFF COURT, CHALAKUDY

EXT.P6. COPY OF THE COPY APPLICATION FILED BY THE DEFENDANTS IN O.S.434/2004 DT. 11.7.07 OF THE MUNSIFF COURT, CHALAKUDY

/TRUE COPY/

PA TO JUDGE.

M.N.KRISHNAN, J.

W.P.(C). NO. 21678 OF 2007

Dated this the 6th day of November, 2007

J U D G M E N T

This writ petition is filed against the order of the court in refusing to receive the additional written statement filed by him. Though copies of the orders are not available before me, copies of the application filed for the relief are produced in this case. It is true that the application for amendment has been filed after the commencement of the trial. The suit was one for injunction, which on receipt of Commissioner's report was converted into the one for recovery of possession and the matter was posted for additional written statement. It is averred that as the defendant was away in connection with his duty, he was not able to contact his lawyer to give instructions. When the matter was listed only, he came to know about the non-filing of the written statement and therefore he has filed an application to receive the same. The additional prayer to be incorporated by way of an additional written statement in the suit for recovery of possession of tile to the effect that the defendant and his predecessor-in-interest have been in occupation of the premises

from 1968 onwards uninterruptedly as of right with the knowledge of the other side.

I am satisfied with the grounds which enables him to file the application after the commencement of the trial and he has not been grossly negligent as well. So taking into consideration all the facts and circumstances, I direct the court below to receive the additional written statement in the light of the amended plaint and frame additional issue, permit the parties to adduce evidence and dispose of the matter in accordance with law.

The writ petition is disposed of as above.

M.N.KRISHNAN, JUDGE

vps